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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 ANDREW R. BELLO,

12 Plaintiff,

13 v.

14 CHASE HOME FINANCE, et al.,

15 Defendant.

Case No. 10cv1913 BTM (WVG)

**ORDER GRANTING MOTION TO
DISMISS**

16 Defendant Chase Home Finance LLC (sued as “Chase Home Finance”) (“Chase”) has
17 filed a motion to dismiss the Complaint for failure to state a claim. For the reasons discussed
18 below, Defendant’s motion is **GRANTED**.

19 According to the Complaint, on August 24, 2004, Plaintiff obtained a mortgage from
20 “Defendants,” and on January 25, 2010, “Defendants” initiated foreclosure proceedings.
21 Plaintiff alleges that he subsequently learned that the mortgage was “securitized” and was
22 traded through a Fidelity Fund. Plaintiff claims that on or about August 24, 2004, “Chase
23 sold to Plaintiff an undisclosed number of shares of stock in a Fidelity Investments for an
24 unknown price, plus commission and other fees.” (Compl. ¶ 34.) Plaintiff asserts claims for
25 securities fraud under the Securities Exchange Act of 1933 and the Securities Exchange Act
26 of 1934 in addition to a “civil conspiracy” claim under 18 U.S.C. § 371.

27 As far as the Court can tell, Plaintiff alleges that his loan was pooled and packaged
28 with other loans in a manner that allowed for the sale of mortgage-backed securities to

1 investors. See Trust for Certificate Holders of Merrill Lynch Mortg. Investors, Inc. Mortg.
2 Pass-Through Certificates, Series 1999-C1, ex rel. Orix Capital Markets, LLC v. Love
3 Funding Corp., 556 F.3d 100, 104 (2d Cir. 2009) (describing securitization process for
4 mortgage loans). It is unclear what role Chase played in the origination or servicing of the
5 loan or the alleged securitization of the loan.

6 Plaintiff lacks standing to sue for securities fraud because he was not a purchaser of
7 any securities resulting from the securitization of his and other loans. See Binder v.
8 Gillespie, 184 F.3d 1059, 1067 (9th Cir. 1999) ("Only a purchaser or seller of securities has
9 standing to bring an action under section 10(b) and Rule 10b-5."); Gutter v. Merrill Lynch,
10 Pierce, Fenner & Smith, Inc., 644 F.2d 1194, 1196 (6th Cir. 1981) (explaining that only
11 purchasers of securities have standing to sue under 15 U.S.C. § 77q(a)). Although Plaintiff
12 claims that he was induced into purchasing securities, it appears that Plaintiff believes he is
13 a holder of shares due to his status as a mortgagee. Even assuming Plaintiff's mortgage
14 was ultimately sold into the secondary mortgage market, Plaintiff does not qualify as a
15 purchaser or seller of the security. See Harms v. Recontrust Co., 2010 WL 2573144, at * 2
16 (N.D. Cal. June 24, 2010) (explaining that plaintiffs, mortgagees, lacked standing to allege
17 securities fraud in connection with the sale of their mortgage on the stock market); Bukhari
18 v. T.D. Serv. Co., 2010 WL 2762794, at * 5 (D. Nev. July 13, 2010) (holding that plaintiff
19 could not base a claim for securities fraud on the fact that his lender sold his promissory
20 note, bundled with others, to a third party).

21 Plaintiff's civil conspiracy claim, which is based on the same allegations of securities
22 fraud, also fails to state a claim. Furthermore, there is no civil remedy for violation of 18
23 U.S.C. § 371, which makes it a criminal offense for two or more persons to conspire to
24 commit any offense against the United States or to defraud the United States, or any agency
25 thereof.

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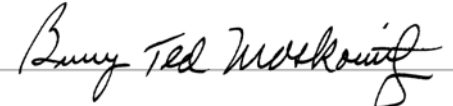
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1 Accordingly, the Court **GRANTS** Chase's motion to dismiss the Complaint. The
2 Complaint is **DISMISSED** for failure to state a claim. The Court grants Plaintiff leave to file
3 an amended complaint within 15 days of the entry of this Order. Failure to do so will result
4 in the entry of judgment dismissing this case.

5 **IT IS SO ORDERED.**

6 DATED: January 14, 2011

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9 Honorable Barry Ted Moskowitz
United States District Judge